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February 7, 1995

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Reply Comments  
MM Docket No. 94-131  
PP Docket No. 93-253

Dear Mr. Caton:

Transmitted herewith on behalf of Pepper & Corazzini, L.L.P., is an original and ten (10) copies of its Reply Comments in MM Docket No. 94-131 and PP Docket No. 93-253. Should there be any questions concerning these comments, please communicate directly with the undersigned.

Sincerely,

  
Michael J. Lehmkuhl

Enclosure

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
Amendment of Parts 21 and 74 of the )  
Commission's Rules With Regard to )  
Filing Procedures in the Multipoint ) MM Docket No. 94-131  
Distribution Service and in the )  
Instructional Television Fixed Service )  
)  
and )  
)  
Implementation of Section 309(j) of the ) PP Docket No. 93-253  
Communications Act - Competitive Bidding )

**REPLY COMMENTS OF**  
**PEPPER & CORAZZINI, L.L.P.**

Pepper & Corazzini, L.L.P. ("P&C"), pursuant to Section 1.415 of the Commission's Rules, hereby submits its reply to comments filed in response to the above-referenced Notice of Proposed Rulemaking ("NPRM") released December 1, 1994.

P&C renews its call for creation of a Federal Advisory Committee ("FAC"), under the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, to address the concerns P&C and others raised in their initial comments. Alternatively, if a FAC is not created, P&C recommends the Commission implement a voluntary electronic filing procedure whereby paper filings could be easily converted into electronic form. Additionally, P&C joins in support of those comments calling for a reduction of the

120 day period allowed Instructional Television Fixed Service ("ITFS") licensees to oppose Multichannel Multipoint Distribution Service ("MDS/MMDS") applications.

### **CREATION OF A FEDERAL ADVISORY COMMITTEE**

P&C, in its original comments, proposed forming a FAC to address comprehensive electronic filing procedures; an idea originally proposed by the Common Carrier Bureau ("CCB") before the MDS/MMDS was moved to the Mass Media Bureau ("MMB").

As discussed in the NRPM and supported by the Comments of many parties, the idea of an electronic application form and electronic filing would offer the Commission, licensees, and wireless operators significant benefits including accurate and faster processing of the applications and a more reliable, up-to-date inventory whereby applicants could better account for previously proposed stations when formulating their interference analyses.

P&C and others demonstrated in their original comments, however, such a plan needs to address the important pragmatic and technical concerns surrounding access, security, reliability and "user-friendliness". See Attachment A hereto; See also; Comments of Pepper & Corazzini, L.L.P., at 6 - 8; Comments of Dalager Engineering, at 3; Comments of the ITFS Parties at 4 - 5, Comments of Marshall Communications, Inc., at 11. There are no assurances that these concerns would be properly handled

by leaving them up to a third party contractor such as a Value Added Network ("VAN") provider.<sup>1/</sup>

Financial concerns also need to be better addressed. As many parties agree, smaller operators, and licensees not supported by large operators, do not have access to the necessary technology or the financial resources to utilize such a system. See, ITFS Parties, at 3 - 4, Comments of the Richard L. Vega Group, at 15; Comments of the Rural Wireless Cable Coalition, 12 - 13. The costs of such a system are not only measured in terms of setting up an "account" with a VAN on a usage basis, but also in terms of technology acquisition, implementation and training. Although the Commission's proposal contemplates spreading out the costs among "aggregators", such as law and engineering firms, those not associated with an aggregator would be left to fend for themselves. Furthermore, such a plan would promote the resurgence of application mills.

P&C believes that by bringing together industry and government representatives within a FAC to address the technical and financial issues, the Commission would benefit from the expert guidance without diverting its attention from the more pressing legal and technical issues of the MDS/MMDS itself. More importantly, the pressing financial and technical concerns surrounding the imposition of electronic filing would be better addressed by a FAC rather than by one VAN or by a few of the Commission staff. Finally, as the Commission sets its sights on the use of

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<sup>1/</sup> Note that the ITFS Parties advocate the Internet as a viable alternative to a VAN. The Internet would offer the benefit of low-cost accessibility, especially to educators, provided issues such as security are adequately addressed.

electronic filing in other services, such a FAC would be instrumental in developing a comprehensive Commission-wide plan of use to other services as well as the MDS/MMDS.

### **ELECTRONIC FILING SHOULD BE VOLUNTARY**

If the current proposal is implemented, however, P&C recommends a voluntary electronic filing system by which paper applications would be converted into electronic form. Some commentators argue that mandating electronic filing for some and not others would defeat the benefits sought by such a plan. See e.g., Comments of the Wireless Cable Association International, Inc., at 48 - 49; ITFS Parties, at 2. However, by utilizing readily available scanning technology to transform the information from paper forms into electronic data, such a system would adequately satisfy these concerns. Such a proposal is also endorsed by the National ITFS Association. National ITFS Association, at 4. This procedure would allow everyone access to the application filing process without sacrificing the benefits of faster, accurate application processing and more efficient electronic record retrieval.

### **THE COMMISSION SHOULD ADOPT A 30 DAY PUBLIC NOTICE PERIOD AFFORDED TO ITFS LICENSEES AND PERMITTEES.**

P&C agrees with the comments of the Coalition of Wireless Cable Operators and U.S. Wireless Cable, Inc., insofar as they propose to reduce the 120 day public notice period afforded ITFS licensees and permittees in which to oppose MDS/MMDS applications for new or modified facilities. 47 C.F.R. § 21.902(i)(6). See, Comments of

the Coalition of Wireless Cable Operators, at 16 - 17; Comments of United States Wireless Cable, Inc., at 11 - 12. Although not specifically addressed in the NPRM, this proposal would significantly reduce one of the most significant of the processing burdens that the Commission seeks to eliminate by this proceeding. Bringing this requirement in line with the 30 day period required in most other services would offer greater administrative certainty and rid the MDS/MMDS application process of unnecessary delays.

In the four years this unprecedented rule has been in effect, there has been no indication that it has been of any significant value to ITFS licensees. The rule has, however, served to hurt MDS/MMDS licensees and operators by contributing to the processing backlog responsible for the stunted growth of the MDS/MMDS. Any hardship that might be imposed on ITFS licensees is clearly outweighed by the benefits of a streamlined administrative process allowing licensees and operators the speed and flexibility they need to introduce new services to their subscribers.


The current 120 day public notice waiting period virtually assumes that no MDS/MMDS application can be processed in less than six months. This unreasonable delay which is well beyond the FCC's own target of 90 day processing turn-around, simply cannot be justified by any demonstrable benefits to the ITFS licensees and permittees. This is especially true since Section 21.902(i)(3) of the Commission's Rules requires that the MDS/MMDS applicant serve the interference analysis upon the ITFS entity at the time the application is filed. Under these circumstances the extension time is simply wasteful.

## CONCLUSION

Accordingly, for the reasons stated above, Pepper & Corazzini, L.L.P. respectfully urges creation of a Federal Advisory Committee to advise in the creation of specific electronic filing standards. Alternatively, P&C urges a voluntary electronic filing standard by developing a system whereby paper applications could be converted to an electronic format. Finally, P&C urges adoption of a 30 day public notice period in place of the current 120 days afforded ITFS licensees to oppose MDS/MMDS applications.

Respectfully submitted,

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## **ATTACHMENT A**

### **Summary of Electronic Application and Filing Issues to be Addressed by a Federal Advisory Committee**

#### **Access**

- Financial hardship of acquiring and implementing new technology.
- Explore other options besides use of a VAN, including use of the Internet or a direct dial-up service, e.g. Bulletin Board System ("BBS") type configuration.

#### **Data Security**

- Protection of confidential data submissions and requests.
- Authentication of the identity of the filing party to avoid forgeries and the use of aliases.
- Transmission validation and an electronic "date-stamp".

#### **Reliability**

- Ability of a system to offer unimpeded access during large volume periods such as filing windows.
- Backup systems in the event of equipment failure.

#### **"User- Friendliness"**

- Types of operating systems to be used (i.e. Macintosh, Windows, DOS, OS/2, Unix or cross-platform).
- Type of delivery system to be used (e.g. electronic mailboxes or file transfer areas).
- Types of communication and file transfer protocols (e.g. Internet or proprietary systems).
- Develop specific software applications or develop system compatible with inexpensive off-the-shelf software.